

REMARKS

Claims 1-4, 6-9, and 12-26 are pending in the present Application. No claims have been amended, added, or cancelled. The Claims are presented here merely for the convenience of the Examiner. Reconsideration and allowance of the claims are respectfully requested in view of the following remarks.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-4, 6-9, and 12-26 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 6,348,540 to Sugioka, et al. (Sugioka) or EP 1045003 to Kugure, et al. (Kugure), each independently or in combination with EP 509506 to Matsumura, et al. (Matsumura). Applicants respectfully traverse this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

As indicated by the Examiner Sugioka broadly discloses at Col. 3, lines 15-21 a composition comprising component (A) and optionally component (B), component (E), component (F), and the component (G). The Examiner also states that Sugioka et al. teach that the “poly(arylene ether) resin is taught to be a preferred component (E) to be present in amounts preferably up to 20%”, Office Action dated July 31, 2006, (hereinafter referred to as OA 07/06), Page 3. Applicants respectfully disagree.

In Sugioka et al, component E is not present in an amount up to 20%, as the Examiner suggests, but rather,

The polar group content of component E is preferably from 0.01% to 20% by weight, more preferably from 0.05 to 10% by weight, relative to 100% by weight of the component E

(Col. 6, lines 6-10, emphasis added)

Here, Sugioka et al. are specifying the amount of functional end groups of the component, not the total amount of component E. Therefore, Applicants submit that Sugioka et al. fail to disclose a flexible resin composition comprising poly(arylene ether) resin, syndiotactic polystyrene, ethylene-octene elastomer, hydrogenated styrene-butadiene block copolymer, and a non-halogen fire retardant wherein the poly(arylene ether) is present in an amount of 10 to 50 parts by weight, based on 100 parts by weight of the combined weight of poly(arylene ether), syndiotactic polystyrene, ethylene-octene elastomer, hydrogenated styrene-butadiene and non-halogen fire retardant.

Accordingly, it is clear that Sugioka does not contemplate the composition instantly claimed. Sugioka discloses embodiments that employ some of the same elements as are instantly claimed but Sugioka does not teach or suggest an embodiment which contains all of the claimed elements. Matsumura does not remedy this deficiency. Accordingly, the claimed invention is nonobvious.

Kogure et al. is directed to a resin that has “good high speed castability and good spreadability”, and “which may be formed into laminates with paper” (Paragraph [0050]-[0051]). In contrast, Applicants invention is directed towards a “resin composition for wire and cable covering material, which is excellent in fire retardancy (without the use of halogens) and excels in chemical resistance (Paragraph [0007]). Kogure et al. discloses a composition comprising (A) a syndiotactic polystyrene, (B) an olefinic polymer and (C) a compound miscible with or having an affinity for component (A) and (B). (Abstract) Examples of component (B) include ethylene-octene copolymer elastomer. ([0021]) Examples of (C)

include hydrogenated styrene-butadiene block copolymer. ([0022]) The composition may include several optional ingredients including polyphenylene ether. ([0028]) Kogure however, contains only a very general teaching with regard to the amount of polyphenylene ether and does not teach or suggest that an amount of polyphenylene ether t be used. In fact, Kogure states that the amount is not specifically defined ([0029]).

“Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, No. 04-1616 (CAFC March 22, 2006) citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); and *In re Rouffett*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998). In the present case, the Examiner makes the conclusory statement that “it is *prima facie* obvious to determine a workable or even optimum range of the resin for resin compositions.” (OA 07/06, Page 4) The Examiner has not provided reasoning as to how or why the amount of poly(arylene ether) would be optimized. To optimize one must have a goal or group of goals that are to be attained. As Kogure is directed to resin compositions that may be used in laminates with paper it is difficult to envision what Kogure teaches about optimizing flame retardant resin compositions, particularly those for in in wires and cables. Kogure provides absolutely no guidance as to amounts polyphenylene ether, nor does Kogure provide a disclosure for composition that excels in chemical resistance, as disclosed in Applicants’ specification Paragraph [0007]. Without some amount of guidance there can be no optimization. In fact, without any guidance at all Kogure is not sufficiently enabling for the inclusion of polyphenylene ether particularly given the complex multiphasic nature of the compositions described in Kogure. Reconsideration and withdrawal of this rejection are respectfully requested.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 50-1131.

Respectfully submitted,

CANTOR COLBURN LLP

By Patricia S. DeSimone
Patricia S. DeSimone
Registration No. 48,137

Date: October 31, 2006
CANTOR COLBURN LLP
55 Griffin Road South
Bloomfield, CT 06002
Telephone (860) 286-2929
Facsimile (860) 286-0115
Customer No.: 23413